

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

7 | DONALD D. PRIMUS,

Case No: C 06-6513 SBA

8 Plaintiff,

ORDER DISMISSING ACTION

9 | VS.

10 JO ANNE B. BARNETT, Commissioner of Social Security,

Defendant.

14 The Court previously denied Plaintiff's request to proceed in forma pauperis (IFP). The
15 Court ordered Plaintiff to file an amended IFP application or pay the requisite filing fee within
16 thirty days of the Court's Order, which he failed to do. The Court warned Plaintiff that the
17 failure to comply with either of these requirements would result in the dismissal of the action.

18 A district court may *sua sponte* dismiss an action for failure to prosecute or to comply
19 with a court order pursuant to Federal Rule of Civil Procedure 41(b). See Link v. Wabash
20 R.R., 370 U.S. 626, 633 (1962); McKeever v. Block, 932 F.2d 795, 797 (9th Cir. 1991). The
21 court should consider five factors before dismissing an action under Rule 41(b): (1) the public
22 interest in the expeditious resolution of the litigation; (2) the court's need to manage its docket;
23 (3) the risk of prejudice to the defendants; (4) the availability of less drastic sanctions; and
24 (5) the public policy favoring the disposition of actions on their merits. Ghazali v. Moran, 46
25 F.3d 52, 53 (9th Cir. 1995).

26 The first three factors cited above weigh in favor of dismissal in light of the fact that
27 Plaintiff has not pursued this matter by submitting an amended IFP application or paying the
28 filing fee, as directed by this Court. The fourth factor also weighs in favor of dismissal because

1 less drastic sanctions would have little impact in light of the Court's prior warning that the
2 failure to comply with its Order would result in the dismissal of the action. Although the fifth
3 factor appears to weigh against dismissal, dismissal is appropriate in light of the other four
4 factors. See Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002) (finding district court did
5 not abuse its discretion in dismissing petition with prejudice where three of the five factors
6 weighed in favor of dismissal). In light of the foregoing,

7 IT IS HEREBY ORDERED THAT this action is hereby DISMISSED for failure to
8 prosecute, pursuant to Federal Rule of Civil Procedure 41(b). The Clerk of the Court shall
9 close the file and terminate any pending matters.

10 IT IS SO ORDERED.

11 Dated: March 16, 2010



SAUNDRA BROWN ARMSTRONG
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 DONALD D. PRIMUS,

5 Plaintiff,

6 v.
7 JOANNE BARNHART et al,

8 Defendant.

9
10 Case Number: CV06-06513 SBA

11 **CERTIFICATE OF SERVICE**

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on March 17, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Donald D. Primus
19 2001 Eastwood Dr.
#13
20 Vacaville, CA 95687-6175

21 Dated: March 17, 2010

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk